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Who Designed the Westphalian System? Probing the Epistemology of the Westphalian Debates: “Moses was but a juggler and King James the new Solomon”

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In the history of international law and relations, ‘Westphalian system’ is commonly used as shorthand to describe the ‘modern’ paradigm of international relations based on a system of exclusive authority vested in sovereign State actors, and evidenced in the Peace of Westphalia in 1648. The discussion here probes the way in which such ideas about governance took root and consolidated into a consensus among political leaders across seventeenth century Europe. What were the means of intellectual exchange and political discourse which facilitated the Westphalian sea-change? This study considers some media which may have been exploited in a significant way in early modern European society for the dissemination of argument and ideas about governance. Two major forms are of particular interest in this context: visual art, with its rich iconographical content; and various kinds of dramatic presentation capable of communicating with both elite and popular audiences. *Law, Culture and the Humanities* 2006; 2: 399–419

I. Background

The present interest in this subject springs from recent work relating to the study of evolving legal and political structures at the international and supranational level during the second half of the twentieth century. Much of this work has drawn upon the perception of a “paradigm shift” in international ordering during this period. Many political scientists, although perhaps rather fewer jurists, have pointed to a shift away from the “modern” or “Westphalian” model of political and legal organisation

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based essentially on the concept of the sovereign state towards a less hierarchical, more fragmented, and horizontal rather than vertical ordering, involving a more complex configuration of actors and personality.¹ In considering such transitions in political and legal organisation, whether it be from pre-Westphalian to Westphalian, or from Westphalian to post-Westphalian, questions naturally arise, not only regarding *what* is entailed in such a shift in ordering but also *how* such fundamental changes occur and are brought about. The general story is now familiar enough. Medieval structures of governance were fragmented and complex in terms of political and legal authority.² The “modern” system, in comparison, suggests a beguiling simplicity of form: all is neatly contained in a collection of sovereign States, each with the same defined and identifiable line of internal, exclusive authority. Now, we are moving back to a more complex, more fragmented form of governance and authority (the “new Medievalism”). But how are we to understand these processes of transition?

From a juristic perspective, there is then the conundrum of changing authority, especially in relation to the appearance and, now, (part) disappearance of the sovereign State. For the very idea of the sovereign State encapsulates a sense of fundamental, exclusive and enduring authority such that a reflection on its birth and demise raises challenging existential questions, similar to the advent and removal of godhead. Who makes a sovereign and how can a sovereign unmake itself? Not surprisingly, for many lawyers (who tend to crave order) such an existential crisis is anathema, and this may explain a juristic reluctance to probe the issue. Nonetheless the puzzle is there, as stated by Harding and Lim:

The conundrum relating to the emergence of the Westphalian sovereign State is at the heart of our understanding of what is comprised by an “international order” and what is the role of “international law.” It is clear that the Westphalian type of sovereign State did not plan its own

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1. There is a large literature, but for a convenient summary of this kind of analysis see, in particular J. G. Ruggie, “Territoriality and Beyond: Problematizing Modernity in International Relations,” *International Organization* 47 (1993): 139 (as an example of international relations literature), and Christopher Harding and C.L. Lim, “The Significance of Westphalia: an Archaeology of the International Legal Order,” Ch 1 in C. Harding and C.L. Lim (eds), *Renegotiating Westphalia*, (The Hague: Martinus Nijhoff, 1999) (as an example of legal literature). The seminal literature includes: F. H. Hinsley, *Sovereignty* (London: Watts, 1966), and *The Fall and Rise of the Modern International System* (Canberra: ANU, 1981); H. Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977); William E. Connolly, *Political Theory and Modernity* (Oxford: Blackwell, 1988); Antonio Negri (transl. Michael Hardt), *Savage Anomaly* (Minneapolis: University of Minnesota Press, 1991); Joseph A. Camillari, Anthony P. Jarvis and Albert J. Paolini (eds.), *State in Transition: Reimagining Political Space* (Boulder: Lynne Rienner, 1993); L. Hooghe and G. Marks, “Contending Models of Governance in the European Union,” in A. W. Cafruny and C. Lankowski (eds.), *Europe’s Ambiguous Identity: Conflict and Consensus in the Post-Maastricht Era* (Boulder: Lynne Rienner, 1997); Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: University Press, 1999).
 2. J. R. Strayer, *On The Medieval Origins of the Modern State* (Princeton: University Press, 1970).

statement that sovereign States “emerged” as the primary legal actors on the international stage following the resolution of the major conflict of the Thirty Years War, since that conflict itself signalled the demise of the non-secular international actors. The political shift is incontrovertible, but this leaves unclear the more exact operation of forces behind the change in (and constructing the perception of) power relations.³

What follows here is an attempt to throw some light on that process of political and legal transformation through an examination of sources of contemporary discourse, in order to identify more precisely the debate, argument and interests which inform such a paradigm shift. What may be identified in this way, as an explanatory exercise, is, again in the words of Harding and Lim:

A discourse which stimulates and consolidates political change ... [which] ... over a period of time will have debated and recognised the *desirability* of a change in political organisation and urged this position in official contexts, so that it is eventually taken on board by politicians and governmental actors who can then, at some stage, announce the consensus of change.⁴

Where, then, may such a “Westphalian discourse” be found—in what sources and texts, such as may illuminate the means and character of this process of reflection and debate? This question has a particular dimension for a period such as that of the later sixteenth and earlier seventeenth centuries. Although part of the enquiry would naturally enough be directed at the sites of discourse occupied by governing elites, it would also be valuable to probe the sense of and discussion about change in the wider society, whose support for political change was becoming increasingly important in the European context at that time. But this was, as yet, a society which was still relatively illiterate and lacking the advantages of a significant print culture. Communication and discussion of ideas relied therefore on media other than the conventional written text. The theoretical argument of Erasmus or Machiavelli could be disseminated to only a small readership through the format of their original publication. On the other hand, media such as dramatic performance and visual representation could act as a less direct, but nonetheless subtle means for such discourse on issues of governance.

3. Harding and Lim, note 1 above, 7.

4. *Ibid.*

A first point on methodology would therefore be helpful at this stage. Certainly, then, a search for answers to the above questions in conventional juristic writing of the period may not prove very fruitful. The "founding fathers" of modern international law (eg Vitoria, Suarez, Grotius) may have pointed out the legal changes under way, but they report the outcome rather than debate the how, why and wherefore. If we take the prime example of Grotius (one of the number of candidates in an arguably doubtful subsequent academic debate as to who may be regarded as the "founder of international law", as though international law could only be the product of a single human mind!); Grotius' "contribution" is often considered to be his perception that, in a *community* of sovereign States there had to be some mutually accepted ordering for them to operate as sovereign States, hence the need for *international* law.⁵ Sure enough, such argument may be seen as the necessary basis for some kind of legal ordering of sovereign State actors, but in another light it is no more than stating the obvious, once the concept of the sovereign State has been accepted. It is surely more accurate to see the role of Grotius, and of other jurists of the sixteenth and seventeenth centuries who have qualified as "founding fathers" of international law, as architects in the wake of change rather than as originators of that process. The point is well made by Antonio Cassese in his comment on the emergence of the "Westphalian" order:

New standards of behaviour became necessary. Consequently, either the old rules were given a new shape or, alternatively, new norms were developed. In this respect, an important contribution was made by a number of imaginative and forward-looking jurists . . . [Vitoria, Suarez, Gentili, Grotius] . . . They set out to lend a lucid legal justification to the interests of the emerging States in general, and of their own country in particular.⁶

It is important to remember also therefore that these juristic architects of the new international order were often concerned with the national interests of particular emergent sovereign States.

But wherefore the sovereign State in the first place? Neither Grotius, nor any of his rivals for the crown of "founding father," provide us with the answer to that question. They were presented with a political reality, and then with the task of shaping it into a workable order. We need to seek other sources of debate and argument which precede the work of Grotius and his colleagues and shed light upon the perceived need and emerging preference for a system of

5. See generally on the significance of Grotius' work: Hedley Bull, "The Importance of Grotius in the Study of International Relations," Ch. 2 in Hedley Bull, Benedict Kingsbury and Adam Roberts (eds), *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 1990).

6. Antonio Cassese, *International Law in a Divided World*, Oxford University Press, 1986: 36.

A closer examination of literary, documentary and other sources reveals that in Europe during the late sixteenth and early seventeenth centuries there was a lively and not simply elitist debate on such questions of political organization and legal authority. To substantiate this point reference may be made to two particular forms of non-legal and non-documentary material as evidence of a vigorous discourse on underlying questions of political, social and legal ordering: first, dramatic work during the late sixteenth and seventeenth centuries; and second, certain examples of visual art of that period. Such material may be examined in an illuminating way, alongside and comparatively with formal and conventional documentation. This is the method used, for instance, by Williams, who analyzes a number of "literary" texts (such as novels) dealing with issues of law and normativity alongside more conventional juristic literature, allowing the former kind of source to illuminate and test the more abstracted argumentation of the latter.⁷ Underlying this method is a conviction that argument relating to political, moral or normative issues is not and should not be the exclusive preserve of "experts" using a limited number of forms of exposition. It may be argued that a fuller, richer and certainly more widely-accessible discourse may be achieved through a wider range of forms, from the vernacular to the exotic, though not excluding the scholarly and the official. In turn, the juxtaposition and comparative reading of such a range of media and sources may prove especially illuminating. As Williams explains in relation to such a use of literary material:

Juxtaposing jurisprudence alongside literature can not only assist in making these difficult [abstracted jurisprudential] discourses more accessible and alive, it can also, as with the particularities of life itself, "test" the *viability* of jurisprudential claims . . . just as [Plato's] metaphor of the Cave can be a medium for engaging with complex philosophical issues, arguably the extended and elaborated "metaphor" or analogic site provided by fiction can be a lively and intelligible "space" for philosophical reflection. In philosophy and jurisprudence such recourse to metaphor, analogy or narrative in order to explore moral questions is identified as "practical ethics" modelling. It can prove a most effective source of philosophical enquiry.⁸

Theatre and other forms of drama, as one medium of discourse, and the work of influential and politically-engaged painters as another, are chosen here with some deliberation. For instance, in relation to Shakespeare's dramatic work and its contemporary performance, Greenblatt has argued:

7. Melanie Williams, *Empty Justice: 100 Years of Law, Literature and Philosophy* (London: Cavendish, 2001).

8. *Ibid.*, xix – xx.

entirely outside of it: rather the Elizabethan and Jacobean theatre was itself a *social event*. Drama, and artistic expression in general, is never perfectly self-contained and abstract, nor can it be derived satisfactorily from the subjective consciousness of an isolated creator. Collective actions, ritual gestures, paradigms of relationship, and shared images of authority permeate the work of art, while conversely the socially overdetermined work of art, along with a multitude of other institutions and utterances, contributes to the formation, realignment and transmission of social practices.⁹

If we therefore see the Elizabethan and Jacobean theatre as a site of active discourse, some of the themes explored in Shakespeare's work assume a more than literary significance and their comparison with more formal, scholarly texts provides a fuller sense and understanding of contemporary debate. In other words some insight may be gained from the study of the way in which a "vernacular" site for the presentation of political and moral questions served as one route for the forging of a consensus relating to the desirable forms of political structure. At the same time the discourse which may be detected in the "vernacular" theatre of that time may also then be tested against that which may be found in comparable media, such as court masques of the early seventeenth century, as an example of more elite discourse.¹⁰

But also it may be revealing to consider the possibility for expression of political and social ideas in works of visual art, via the combination of roles which could be carried out by members of an internationally-mobile intellectual community during the sixteenth and seventeenth centuries. Peter Paul Rubens provides a good example as somebody with an established reputation as a painter whose talents were also used by monarchs for diplomatic work. In such a case, appointment as a court painter could be combined with a process of political dialogue. In 1603 Rubens was court painter to the Duke of Mantua while also acting as an

9. Stephen Greenblatt, "Invisible bullets: Renaissance authority and its subversion, *Henry IV* and *Henry V*," Ch 2 in Jonathan Dollimore and Alan Sinfield, *Political Shakespeare: Essays in Cultural Materialism* (Manchester University Press, 2nd ed., 1994).

10. Moreover, it should be remembered that Shakespeare's audience was elite as well as vernacular, and that especially after the accession of James I, Shakespeare's work was regularly performed at court (Shakespeare's company presented the larger part of the 421 plays performed at court during James' reign). See Brett Dolman, *Drama and Debate at the Court of James I* (Hampton Court: Historic Royal Palaces, 2004), which provides a concise and accessible account of the political significance of dramatic presentations at the court of James I (published to coincide with the exhibition at Hampton Court Palace, *Drama and Debate at Hampton Court* (January 2004–January 2005)). The masque, however, had a specifically elite character: a kind of dramatic performance staged at court, by courtiers as players, with a political sub-text – order over chaos through monarchical good governance. French and Italian versions of this kind of performance were enthusiastically developed for the Jacobean and Caroline courts in early seventeenth century England, in particular by Ben Jonson and Inigo Jones.

in 1628–29. In relation to the latter negotiation, Wedgwood explains:

On 25 June 1629 King Charles I received Peter Paul Rubens in audience at Greenwich Palace. He received him . . . as an accredited envoy empowered to explore the possibilities of a peace with England. Rubens was not of high enough rank to fill the post of ambassador and he had been granted a patent of nobility to fit him for the lesser capacity in which he came. In effect he would do all the essential diplomatic work and a Spanish grandee would then be appointed to sign the treaty.¹¹

Moreover, we should understand Rubens' role not simply in terms of being both a talented painter and a trusted diplomat. He was also an individual with his own political convictions. Although a devout Catholic and a loyal subject of the Spanish monarchy, he was deeply committed to one political cause: peace with the Dutch and the reunion of the Netherlands, in some kind of federal structure under the suzerainty of the Spanish crown. In general, therefore, he strongly favoured conditions of peace and political stability, so that these convictions (in themselves, of course, the outcome of political debate) find some expression in his works of art. Velazquez was not involved in diplomatic activity in the same way as Rubens, but it should be remembered that the former was at that time the only court painter in Spain¹² and had an appointment as Gentleman of the King's Bedchamber. In practice Velazquez fulfilled a central role in conveying a vision of Philip IV as heir to the great military Spanish Catholic tradition.

More generally, it should be borne in mind that much of the visual artwork from this period was commissioned work which itself served a political as much as artistic purpose: portraiture for instance which was intended more as a statement about status and authority than a representation of visual verisimilitude. Here, the scholarship of iconography may now be drawn upon to interpret relevant themes in such sources. Many works of art of this period were rich in detailed symbolism and metaphorical depiction of well-known events, in contrast to earlier work, much of which was preoccupied with the depiction of classical scenes and biblical events. Such work thereby contained a significant sub-text of argument. To cite particular examples, officially commissioned works such as the ceiling paintings completed by Rubens for the Whitehall Banqueting House (1632–34), or the "Rainbow Portrait" of Elizabeth I (1600) (both discussed

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11. C.V. Wedgwood, *The Political Career of Peter Paul Rubens* (London: Thames and Hudson, 1975), at p. 7. Wedgwood's study (presented at the 7th Walter Neurath Memorial Lectures) provides a detailed insight into Ruben's political role. It is replete with telling examples; for instance: it was in Anthony Van Dyck's studio that Rubens "organized a 'chance' meeting with the Earl of Carlisle, passing through Antwerp on a mission to Savoy, and used all his eloquence to persuade him that the King of England's best interests lay in a peace with Spain" (at p. 38).
 12. Rubens and Velazquez met in 1628 when Rubens travelled to Spain on a diplomatic mission. It is intriguing to speculate on both the artistic and political content of their encounter.

The significance of such dramatic and artistic media of this period in terms of political discourse may be judged by comparing examples of such work from earlier periods. Little needs to be said regarding the kind of cultural advance represented by Shakespearian theatre, in terms of both its range of subject-matter and its reflective treatment of political and moral issues. Similarly, there is a strong contrast between the rather more descriptive preoccupation of much earlier artwork with well-known classical and biblical themes and the sophisticated portraiture and depiction of contemporary events achieved by earlier seventeenth-century artists.

Before leaving this discussion of methodology, it should be noted that this means of exploring the wider discourse of political and legal change may of course be employed in relation to other historical contexts. In particular, the perceived late twentieth century, “post-Westphalian” paradigm shift referred to above could be similarly studied, although the media of discourse may well be different, reflecting cultural and technological change over time. Thus, in a later twentieth century or present-day context, cinema and television, a variety of published written formats, and more latterly internet material and dialogue—all of that now in fact commonly referred to as the *media*—would comprise some of the main vehicles of discourse.¹³ In short, the same point may be made: discussion of political reconfiguration and new legal forms, at whatever point in time, is not the exclusive concern of elite scholarship or official debate. These matters may be widely discussed in a number of fora, though some are perhaps more obvious than others. Special interest NGOs (for instance, in the present context, the Commission on Globalization, or the World Federalist Association of America) have their meetings and web sites, but less directly but nonetheless still vividly, written fiction or cinema may take a context such as that of “failed” or “rogue” States and via drama reflect on the implications of such a factual context for political and legal ordering. All human cultures have their appropriate media of discourse and it is a worthwhile task for the student of political and legal change to penetrate such sources as fully as possible.

III. The quest for order: the “unity and married calm of states”

A significant “political” concern in sixteenth-century Europe was a perceived need for order, such as could be reinforced through clear lines of political authority. As may be expected, this is voiced in political writing; but it also finds a supporting resonance in dramatic work for both the

13. The work of just one film director could be taken as an example. Francis Ford Coppola's *Godfather* trilogy explores (among other things) the irrelevance of State authority as a means of regulating human affairs. Coppola's *Apocalypse Now* (based in turn on Joseph Conrad's novel *Heart of Darkness*) presents very much a non-State centred perspective on a well-known event (the Vietnam War) in twentieth-century international relations.

sovereign State embodying the idea of centralized and exclusive political and legal authority. This line of discourse may be characterized as a quest for effective and stable governance through the establishment of strong and unquestioned political order.

Sources of this kind of argumentation are numerous. Firstly, some political writing may be cited. Charles Merbury, writing in 1581, referred to “well-ordained kingdoms” in which only the prince has “a voice definitive”:

But our prince, who is the image of God on earth, and as it were *un minor essemplio* [a pattern in little] of His almighty power, is not to acknowledge any greater than himself, nor any authority greater than his own. Wherefore, as he is not to receive his power from any, so he is neither to be subject unto any higher power, either at home, or abroad, though some do maintain that a prince ought to be subject unto the states and peers of his realm . . . if it be not well tempered, and conveniently limited, most prejudicial unto the state of a monarchy, perverting and converting the same into a mere aristocracy.¹⁴

Similarly, the legal writer William Fulbecke, in his *Pandectes of the Law of Nations* of 1602, uses historical argument to support his claim that democracy “is no form of commonwealth”:

For the heel can not stand in place of the head, unless the body be destroyed and the anatomy monstrous. It is against the nature of the people to bear rule, for they are as unfit for regiment as a mad man to give counsel . . .¹⁵

The fickle, unpredictable and irrational nature of the populace is explored on the other hand by Shakespeare, for instance in *Julius Caesar, III, iii* and *Coriolanus, II, iii*, and also in the reflection of Ulysses in *Troilus and Cressida, I, iii*:

The heavens themselves, the planets, and this centre,
Observe degree, priority, and place,
Insisture, course, proportion, season, form,
Office, and custom, in all line of order . . .

. . . But when the planets
In evil mixture to disorder wander,
What plagues and what portents, what mutiny,
What raging of the sea, shaking of earth,
Commotion in the winds! Frights, changes, horrors,
Divert and crack, rend and deracinate,

14. Charles Merbury, *A briefe discourse of royall monarchie, as of the best common weale* (London, 1581).

15. William Fulbecke, *The Pandectes of the Law of Nations* (London, 1602).

Another site of dramatic discourse of this kind was the masque, as a form of drama actually enacted at the royal court, and which provided an opportunity to express argument concerning the contemporary role of monarchy and governance. In such productions the audience would be aware not only of the stage but also of the monarch himself watching the play, so that the monarch became part of the performance.¹⁷ As Dolman comments, in relation to Jacobean masques:

The King and his family would have sat on a raised platform, opposite the stage itself. This not only gave them the best viewing position, but also made sure they were themselves in full view of the audience. The royal family was, in other words, as much a part of the performance as the actors on the stage set up in front of them. James, of course, was well aware of this. He had said as much in his own handbook to kingship, *Basilicon Doron* . . . "The King is as one set on a stage, whose smallest actions and gestures all the people gazingly do behold."¹⁸

A common function and theme of these masques was the conversion of a chaotic world into one of harmony and peace through the good governance of the monarch. In Samuel Daniel's *The Vision of the Twelve Goddesses* (1604), James' queen, Anne of Denmark, took the main role herself.¹⁹ *Love's Triumph* (1631), designed and performed for the court of Charles I, concludes with the world as an idealized garden, the figure of Venus placed opposite Queen Henrietta Maria as a mirror image; the stage mechanisms transform the garden into a symbol of royal union (the throne is replaced by a palm tree, the palm as a symbol of peace, which rises from below the stage with a crown on top). Aurelian Townschend's masque, *Albion's Triumph*, transforms the figure of the King into an ideal intellect, and Charles and Henrietta Maria are united into a mystic hermaphrodite symbol, the "Mary Charles." The King descends from the stage to join the Queen in a dance, and this visual union of king and queen signifies the ideal intellect. This reflects the belief that the mind of the king and queen are inseparable (a unified sovereignty) and that the concept of the monarchy is distinct from that of the corporeal monarch.²⁰

16. *Troilus and Cressida*, I, iii. (Shakespeare, William, *The Complete Works* (ed. Peter Alexander, London: Collins, 1951).

17. For a detailed study, see Stephen Orgel, *Illusion of Power: Political Theatre in the English Renaissance* (Berkeley: University of California Press, 1975).

18. Dolman, note 10 above, at p. 8.

19. *Ibid.*

20. Stephen Orgel and Roy Strong, *Inigo Jones: the Theatre of the Stuart Court* (Berkeley: University of California Press, 1973). Political reality may have been very different from such rhetoric; witness, for instance, the political intrigues of Anne of Austria, the wife of the French monarch Louis XIII.

terms of portraiture it may be sufficient for present purposes to confine reference to some of the portraits of Elizabeth I of England, of which there are a number and many of which were carefully prepared as images for public consumption. Such paintings are pre-eminently sites of iconographic reading, since they are replete with contemporary emblems and metaphor.²¹ The well-known *Rainbow Portrait* of Elizabeth (1600, anonymous, now in Hatfield House, UK) may serve as a good example.²² Painted in 1600 and depicting quite a young woman, this is evidently not a realistic representation, and the surrounding symbolism and dress are as important, if not more so, than the body of the subject. The rainbow was an established signifier of peace. Graziani suggests a biblical basis for this signification²³: in *Genesis ix, 13–16* the rainbow appears as the covenant of peace—“I do set my bow in the cloud and it shall be taken as a token of covenant between me and the earth.” Strong argues²⁴ that the rainbow imagery fulfils the prophetic vision outlined by Giordano Bruno: Elizabeth reigns over “some new world as vast as the universal frame where her all-powerful hand should have full scope to raise a united monarchy.” The jewelled serpent on her left arm signifies wisdom (through going to ground and rising upwards) and has captured a ruby, representing passion (thus wisdom rules passion); the heart-shaped jewel on the sleeve alongside the serpent represents counsel; the armillary (or celestial) sphere constancy, and again intelligence and wisdom. The inscription on the left-hand side of the portrait reads *non sine sole iris* (*no rainbow without the sun*), inviting the interpretation that the Queen is the rainbow (and hope of peace) but is only there because of God²⁵ or alternatively the Queen as the sun who brings the rainbow.²⁶

Other portraits of Elizabeth replicate this iconography: for instance, that by Marcus Gheeraerts the Elder (1580s), depicting the Queen as the harbinger of peace, holding an olive branch, and with a sword at her feet; similarly in the *Ermine Portrait* by Nicholas Hilliard²⁷ (1585), the Queen

21. On the iconographic reading of these portraits, see: Roy Strong, *The English Icon: Elizabethan and Jacobean Portraiture* (Paul Mellon Foundation/Routledge and Kegan Paul, 1969); *The Cult of Elizabeth: Elizabethan Portraiture and Pageantry* (London: Thames and Hudson, 1977, 1999); *Gloriana: Portraits of Elizabeth* (London: Thames and Hudson, 1987); Tatiana String, “The Inheritance of a Tudor Visual Language,” paper presented at NPG Conference, 2003, *Picturing Presence: Portraiture and Patronage in Elizabethan England*; René Graziani, “The Rainbow Portrait of Elizabeth I and its Religious Symbolism,” *Journal of the Warburg and Courtauld Institutes*, 35 (1972): 247.

22. The portrait is half-length, and depicts the Queen holding a rainbow, and dressed in costume which is covered with allegorical features: embroidery and jewellery on the arm of her dress depicting a serpent, and other parts of the dress showing symbolic jewellery and surface decoration; the inscription appears on the left hand side of the painting above the hand holding the rainbow.

23. Graziani, note 21 above: 251.

24. Strong, 1987, note 21 above: 161.

25. Graziani, note 21 above: 258.

26. Strong, 1977, note 21 above: 52.

27. As well as being a painter of miniatures, Hilliard was also the designer of Elizabeth I's second great seal, an activity more obviously linked with the assertion of sovereignty.

1583) the column behind the Queen depicts the tale of Aeneas, who, like Elizabeth, renounced marriage in order to lead his kingdom to glory. In these readings, then, the authority of the monarchy is associated with good order and governance, but also one that is naturally ordained.

There is also some linkage between the iconography of such portraiture and that employed in court masques. In the 1611 masque, *The Tempest*, Iris and her rainbow point to hope and fecundity – a union of heaven and earth which counterbalances the destructive force of the storm.²⁸ Yates suggests²⁹ that portraiture and masques shared common sources, such as books on national costume which appeared in the sixteenth century, such as Boissard's *Habitus Variarum Orbis Gentium*, published in 1581.

Other portraits and paintings depicting crucial political events may be interpreted in a similar way. Rubens' ceiling paintings for the Whitehall Banqueting House supply the same kind of narrative, using iconography which celebrates the reign of the Stuart monarch James I of England. For Rubens, the unification of Scotland and England through the monarchy of James represented the achievement of peace and stability. Different parts of the ceiling painting show, for example, female representations of Peace and Plenty embracing warmly as personification of the benefits of wise governance, and James, as the "New Solomon" of contemporary parlance, presiding over the two contending mothers, England and Scotland, and effecting a reconciliation. In real political terms, for an observer such as Rubens, the benefits of the Union would have been evident: earlier Scottish political instability and feuding was brought to an end, largely through the inability of the rebellious Scottish nobility to engage the English monarchy as a third party in such protracted feuding.

At a somewhat later date, there is further evidence in visual art of the celebration of the sovereign monarch as effective ruler, in relation to Louis XIV of France. In the Lebrun painting of 1661, *The King Governs for Himself*, Louis is depicted holding the rudder of the ship of state while being crowned by the gods, the figure of France represses discord and Hymen demonstrates abundance. In this vision the gods assist Louis in his royal mission.³⁰ Lebrun tapestries in the Hall of Mirrors in Versailles display French diplomatic triumphs during the 1670s, reinforcing Louis' own conviction that he had personally won political victories over both Spain and the Papacy. Medals were also struck to commemorate these events. Louis' leadership and decisive personal role during the War of Spanish Succession are celebrated in a number of artistic works. Again, Lebrun in *Louis the Conqueror* depicts Louis as a calm presence surrounded by disarray, and in *The Crossing of the*

28. Graziani, note 21 above: 253.

29. Frances Yates, "Boissard's Costume Books and Two Portraits," *Journal of Warburg and Courtauld Institutes* 22 (1959): 365.

30. Such representation of Louis is significant, coinciding with the close political and historical identification of that monarch in particular with the centralized French State, embodied in the apocryphal statement: "L'état, c'est moi."

XIV as the effective sovereign is in fact a striking instance of an established artistic tradition: Louis' earlier predecessor Henri IV had already been depicted as Perseus rescuing an Andromeda/France figure from the monster Catholic League.³¹ The message behind such work was: the effective sovereign quells political disorder, with God's support.

A final, intriguing, example is provided by a much earlier work, but one which appears to have been adopted for this later role of celebrating a strong, centralizing power. Mantegna's well-known series of canvasses, *The Triumphs of Caesar*, were painted in the fifteenth century (probably 1485–1494, for the Marquis of Mantua), but were later acquired by the English king Charles I in 1629 and installed at Hampton Court Palace.³² Although much of Charles' art collection was dispersed following his execution, the Mantegna canvasses were expressly reserved from sale by Cromwell, and remained at Hampton Court thereafter. The subject-matter of *The Triumphs of Caesar* is very suggestive for a centralizing political order, whether monarchical or republican: a vivid and composite depiction of the public display of Julius Caesar's consolidation of power and authority in the proto-imperial Roman State. It is a striking example of the fusion of an earlier classical theme with a contemporary seventeenth-century political message.

A reflection on the above range of sources points therefore to a strong conviction at the time in the virtues of a centralized and unified political authority as a guarantor of virtuous governance.³³ In this way, it is then possible to appreciate some of the attraction of the idea of the sovereign State as a key component of political ordering.

IV. The quest for the effective sovereign: the issue of tyranny and just rebellion

Building upon the discussion above, an enduring problem for both the theory and practice of centralized and exclusive political authority, such as that contained in the idea of the sovereign State, is that of the sovereign "gone rotten" and as such then a serious internal threat to the viability of such a system of ordering. This problem was a familiar topic of the sixteenth-century debates.

31. J H M Salmon, "The Afterlife of Henri IV of Navarre," *History Today*, 47 (1997): October issue.

32. For a more detailed account, see A. Martindale, *The Triumphs of Caesar by Andrea Mantegna in the Collection of Her Majesty the Queen at Hampton Court* (London, 1979); Christopher Lloyd, *Andrea Mantegna: The Triumphs of Caesar* (London: HMSO, 1991). The set of paintings comprise a succession of canvasses depicting the triumphal procession, including spoils of war and a parade of captives, and representations of captured cities, with Caesar himself in the rearguard, reflectively contemplating the consolidation of his power and authority.

33. In seeking to understand the reasons for such a conviction, doubtless one important factor was the interest of the growing middle class in ensuring conditions of political and economic stability – not served by warring and rebellious nobles (a message for instance implicit in Shakespeare's *King Lear*).

of non-resistance to even tyrannical governance. Thus, in the earlier period Thomas Aquinas had written:

If to provide itself with a king belongs to the right of a given multitude, it is not unjust that the king be deposed or have his power restricted by that same multitude if, becoming a tyrant, he abuses the royal power. It must not be thought that such a multitude is acting unfaithfully in deposing the tyrant, even though it had previously subjected itself to him in perpetuity, since he himself has observed that the covenant with his subjects should not be kept, since, in ruling the multitude, he did not act faithfully as the office of a king demands.³⁴

However, the sixteenth and seventeenth-century sources are not always dogmatic on this issue and reveal some sensitivity towards the nature of this moral and political dilemma. Although some sixteenth-century political writing argues strongly against any act of rebellion, it is possible to perceive in much of Shakespeare's drama the distinction being drawn between the individual and the office, or the two bodies of the ruler: the mortal and fallible body and the mystical and immutable body (in the words of the lawyer Edmund Plowden the "body natural" and the "body politic"³⁵). This kind of argument can therefore be seen as reaching towards recognition of an abstract sense of sovereignty, residing in the continuing form of the State, irrespective of the human representation of that sovereignty in the head of State for the time being. The chaos unleashed by the assassins in *Julius Caesar* follows from their "private" and therefore arrogant conspiracy, thus violating the sanctity of the institutional power of the ruler. Similarly in *King Lear*, Lear's unnatural and again arrogant abandonment and division of his power unleashes a political chaos which would remind Shakespeare's audience of the misery and political uncertainty of the hundred years which preceded the assumption of Tudor rule.³⁶ On the other hand, the voluntary relinquishing of power by a bad ruler, conferring it on another (in modern terminology a "constitutional transfer of authority"), such as occurs in *Richard II* is viewed as acceptable.

34. Saint Thomas Aquinas, *On Kingship: To the King of Cyprus* (1266, translated Gerald B Phelan, Toronto, 1949).

35. Edmund Plowden, *The Commentaries or Reports of Edmund Plowden* (London: 1578).

36. Dolman comments: "Shakespeare did not shrink from addressing controversial issues of politics. He was a man of his time after all . . . The performances of his new play *King Lear* at the Christmas court of 1605 might have occasioned the odd raised eyebrow in the audience . . . James believed in the divine right of kings, but Shakespeare appeared to be implicitly suggesting that James' right to rule might depend on his subjects' goodwill and his own good judgment." (*Drama and Debate at the Court of James I*, note 10 above).

This suggests an appreciation in such discourse of the need on the one hand to preserve authority, but on the other hand allowing the possibility to separate the metaphysical nature of that authority (the sovereignty) from the person of its (fallible) human representative. The more recent actual equivalent of this approach to political authority is to be found in the separation of personal accountability (for instance, the trial of former heads of State (such as Pinochet, Milosevic or Saddam Hussein) for war crimes and crimes against humanity) and respect for the integrity of the abstract sovereign power. Another example would be the temporary occupation of States such as Germany and Austria following the second world war, or Iraq in 2003, while maintaining their residual identity and later operational recovery as sovereign entities.

A further interesting example of debate concerning the ruler's behavior is provided by the masques and anti-masques³⁷ performed at the English court of Charles I.³⁸ For example, some of the concern about and resistance to the manner of Charles' governance during the 1630s found expression in Shirley's *Triumph of Peace*, commissioned by the Inns of Court in 1634. Significantly, the legal profession spent some £20,000 in this attempt to address the monarch in his own preferred discourse of masque. This anti-masque employed the visual metaphor of classical architecture to signify civil order and decorum, referred to specific events as criticism of the King's policy, and presented the central argument that peace and law were interdependent ("We cannot flourish but together").³⁹ Moreover, the King's own mythical discourse (Charles and Henrietta Maria represented as Jove and Themis, divine power and law) was subtly turned against the monarchy's own policies, as an argument against despotic rule. Charles, however, was by that stage so seduced by his own argument that he failed to appreciate the critique offered by *The Triumph of Peace* and interpreted it as confirmation of his own beliefs (Jove and Themis are guarding peace, justice and the law). The King followed quickly with his own commissioned masque, Carew's *Coleum Britannicum*, which was a consolidation of the image of regal power. In this performance, Inigo Jones' stagecraft enables the King's will to achieve the impossible by replacing a wild landscape with a civilized Italianate garden. This kind of dialogue through masque and anti-masque served therefore as a telling rehearsal of the subsequent military struggle between King and Parliament during the 1640s.

37. As a form, the anti-masque was a particular version of the masque, in which the urgent need for harmony is explicitly signalled by the enactment of disharmony, thus shifting some of the emphasis to the latter.

38. Orgel and Strong, note 20 above.

39. *The Triumph of Peace*, II.560-1.

If sixteenth-century discourse was edging its way towards an acceptance of and commitment to sovereign political and legal authority, this should not be understood as a naïve belief in the easy establishment and maintenance of such an ordering. There appears to have been a perception that the governed had to be convinced, and remain convinced, that it would be worthwhile. This kind of argument is widely distributed, and can be found for example both in political writing and also what might be termed “perils of disorder literature,” and again is implicit in artistic representation such as Rubens’ ceiling painting in Whitehall. Once again, a closer examination of sixteenth and seventeenth-century sources suggests that there was some subtle appreciation of the dynamics of sovereignty as a method of political organisation, which went beyond the simplistic reliance on “divine right of kings” argument, employed subsequently and to their grief by the earlier Stuart monarchy. Indeed, there appears to have been a clear realization that, while a strongly constituted sovereign power was desirable, its preservation required some political skill. Those subject to such power had to be given reason for their state of subjection.

Certainly, in political writing there was an appreciation of the need to enunciate a clear formal basis for sovereign authority, recognized as a necessary trick of governance. The lawgiver and the ruler required some rationale for the authority they were claiming to exercise, and this was summed-up in the cynical quip (falsely attributed to Christopher Marlowe), “Moses was but a juggler.” This perception is famously present in the writings of Niccolò Machiavelli, who argued concisely:

There was never any remarkable lawgiver amongst any people who did not resort to divine authority, as otherwise his laws would not have been accepted by the people.⁴⁰

The same sentiment may be found doing the rounds for more popular consumption in the form of an anonymous verse which was being attributed to Walter Raleigh at the time of his trial for treason:

Then some sage man, above the vulgar wise,
Knowing that laws could not in quiet dwell,
Unless they were observed, did first devise
The names of Gods, religion, heaven, and hell . . .
Only bug-bears to keep the world in fear.⁴¹

40. Niccolò Machiavelli, *Discourses upon the First Decade of T. Livius* (c. 1520), 147.

41. See Greenblatt (1994), note 9 above.

Caesar, where the device is employed of depicting subversion as a way of emphasizing power. As Greenblatt comments: "the apparent production of subversion is the very condition of power."⁴² Much of this drama demonstrates the reassertion of authority in the face of its apparent disruption. In *The Tempest*, the play's protagonist Prospero is at the opening of the drama apparently cast from his position of power and authority. But it becomes clear during the play that he is in fact cunningly exercising residual power, ultimately so as to reassert his own authority. (This play reveals again the distinction between the institution of the sovereign and its humanly-fallible representative, discussed above, and confronts the dilemma of how to deal with the bad ruler.) So too in *Measure for Measure* Duke Vincentio both reserves and then reinforces his authority by allowing his substitute Angelo to rule badly and then be brought to account:

I have on Angelo imposed the office,
Who may, in th'ambush of my name, strike home,
And yet my nature never in the sight
To do it slander.⁴³

This kind of drama reveals a striking perception of the manipulation of power and authority for purposes of its own maintenance. Indeed, the cunning ruler may even encourage subversion so that a demonstration of the ills that it leads to and their subsequent correction by properly constituted authority acts as a reaffirmation of that authority.⁴⁴ This, indeed, would become a major justification for State sovereignty: that only the State is able to maintain order and stability and guarantee the necessary and desirable conditions of *ordre public*. Thus Shakespeare echoes the Machiavellian use of a "cloak of religion" as an instrument of civil control, in *Richard III*:

... Intend some fear;
Be not you spoke with but by mighty suit;
And look you get a prayer-book in your hand
And stand between two churchmen, good my lord
For on that ground I'll make holy descant ...⁴⁵

Furthermore, the "effective" sovereign's need to understand and manipulate the exercise of that sovereign power is well illustrated by the artful practice

42. Greenblatt (1994), 45.

43. *Measure for Measure*, I, iii.

44. A cynical reading of this lesson of "crisis creation and resolution" might cite the example of the Thatcher Government in the UK exploiting in 1982 the Falkland Islands "war" as a means of consolidating its own political credibility.

45. *Richard III*. V, vii.

I have sounded the very base-string of humility. Sirrah, I am sworn brother to a leash of drawers and can call them all by their christen names, as Tom, Dick, and Francis . . . and when I am King of England, I shall command all the good lads in Eastcheap.⁴⁶

And in Warwick's assurance to the King:

The prince but studies his companions
Like a strange tongue, wherein, to gain the language,
'Tis needful that the most immodest word
Be look'd upon and learnt, which once attain'd,
Your Highness knows, comes to no further use
But to be known and hated. So, like gross terms,
The Prince will in the perfectness of time
Cast off his followers, and their memory
Shall as a pattern or a measure live,
By which his Grace must mete the lives of other,
Turning past evils to advantages.⁴⁷

The same celebration of the virtues of good kingship, in using political skill and residual sovereign authority to maintain order and stability are evident in artwork such as the *Rainbow Portrait* of Elizabeth I, and the later Whitehall ceiling painting by Rubens. In the *Rainbow Portrait*, a notable feature of the Queen's costume is the pattern of eyes and ears on her dress. This may be seen as signifying the need for the monarch's judgement and wisdom in interpreting the information that she gains through the eyes and ears of others. Such a concept is also explored in contemporary literature, such as Henry Peacham's *Minerva Britannia* of 1612:

Be served with eyes, and listening ears of those,
Who can from all partes give intelligence
To gall his foe, or timely to prevent
At home his malice and intendiment.⁴⁸

A study of the iconography employed in the ceiling panels by Rubens in the Whitehall Banqueting House also points to the representation of artful government and its benefits—Minerva, again, defeating the personification of ignorance; Mercury wielding the caduceus, the emblem of peace; the embrace of Peace and Plenty, mentioned already; and the personification of

46. *1 Henry IV*, II, iii.

47. *Henry IV*, IV, ii.

48. Strong, 1987, note 21 above: 159. Peacham was a writer and polymath, published *Graphice*, a practical treatise on art in 1606, and was the source for Samuel Johnson's heraldic definitions.

Another significant example of visual portrayal of the skilful “Machiavellian” sovereign is provided by Velazquez’s well-known *Victory at Breda*, painted for Philip IV of Spain in 1634.⁵⁰ The magnanimity shown by the Spanish commander towards the defeated enemy is unexpected for its time, wrong-footing the viewer versed in the traditional vocabulary of defeat, surrender and triumph (as depicted for instance in Zurbaran’s exactly contemporary *Surrender of Seville*). *Victory at Breda* subtly suggests the superior strength of the ruler who can afford magnanimity to the enemy. It implies that either Philip IV or Velazquez were familiar with Machiavelli’s argument that, while a position of strength should be exploited to gain or retain power, gratuitous force or cruelty should be avoided: “to be severe and gracious, magnanimous and generous . . . for men do harm either out of fear or hatred.”⁵¹ Again, such lessons were not lost on Louis XIV of France, whose success in the Spanish War of Succession was celebrated as “strength in moderation, goodness in giving repose to Europe,” and depicted visually in commissioned tapestries and ballets at Versailles.

VI. The intellectual antecedents of the sovereign State: Renaissance self-fashioning?

The discussion in this paper has sought briefly and selectively to indicate some of the sources of discourse during the sixteenth and seventeenth centuries which informed and served eventually to construct the “Westphalian” concept of the sovereign State. In particular, the range of such sources should be noted as an indication of the breadth of the debate on matters of governance, showing that such reflection was not just the preserve of political or intellectual elites and that the model of governance which emerged as the Westphalian model was based on a broad social consensus. Elizabethan and Jacobean theatre is an especially fertile source of material for evidence of such discourse and several of Shakespeare’s plays, for example, may be read with great benefit to obtain insight into contemporary reflection on issues of evolving governance.

Greenblatt has referred to this intellectual process characteristic of the sixteenth century as “Renaissance self-fashioning.” This concept derives from:

49. With the benefit of hindsight, it may be said that subsequent history modified this narrative, in that some of the Stuarts were less skilful in their manipulation of sovereignty than Shakespeare’s Hal or Duke Vincentio. As Belkin comments: “That the inflexible Stuart insistence on the divine right of kings, which Charles I inherited from his father, was later to force the confrontation between king and Parliament that led to the outbreak of civil war, was an irony that could not have been foreseen by Rubens” (Kristin Lohse Belkin, *Rubens* (Phaidon, 1998). As also suggested by the evidence of the royal masques discussed above, Charles should have studied Machiavelli and Shakespeare more carefully!

50. José Lopez-Rey, *Velazquez: the Complete Works* (Taschen: 1997).

51. *The Prince* (ed. Peter Bondanella and Mark Musa, Oxford University Press: 1984: 29).

that govern the generation of identities. This change is difficult to characterize in our usual ways since it is not only complex but resolutely dialectical. If we say that there is a new stress on the executive power of the will, we must say that there is the most sustained and relentless assault upon the will; if we say that there is a new social mobility, we must say that there is a new assertion of power by both family and state to determine all movement within the society; if we say that there is a heightened awareness of the existence of alternative modes of social, theological, and psychological organization, we must say that there is a new dedication to the imposition of control upon those modes and ultimately to the destruction of alternatives.

Perhaps the simplest observation we can make is that in the sixteenth century there appears to be an increased self-consciousness about the fashioning of human identity, as a manipulative artful process.⁵²

This analysis employed by Greenblatt may usefully be taken on board in our search for the intellectual origins of State sovereignty, in that the dialectical process that he describes may be seen as informing a shift towards centralized and hierarchically-determined authority.⁵³

Intellectual processes are by their nature less visible than political and economic outcomes. The emergence of the Westphalian sovereign State system as the model of political organization which has characterised the "modern" period of international law and relations is historically manifest. The intellectual and cultural forging of that order is less transparent but nonetheless some perception of *how* it occurred is important for our overall understanding of such transitions and system change. One of the purposes of the discussion in this paper was to indicate the way in which such a process should be regarded as much more than just a reading of formal documentation and "elite" written sources. The discourse of political and legal change is likely to be more widely situated and its media more varied. As can be seen from the discussion above, the early modern background to the "Westphalian" transition is rich in its variety of sources of discourse, some of them perhaps not especially obvious to the conventional student of

52. Stephen Greenblatt, *Renaissance Self-Fashioning: From More to Shakespeare* (University of Chicago Press: 1980: 1-2).

53. The question remains, of course, concerning the forces which were motivating these intellectual developments in the political and juridical fields and this is an aspect of the subject on which historical research already sheds a good deal of light. Economic and social change - the beginnings of a shift from an agrarian to a more urban society, the concomitant increase in social mobility and the demise of feudal structures of landholding and social organisation - all are undoubtedly of great significance in this context. Also, the beginnings of European colonial expansion supply a relevant theme informing the kind of developments discussed above, certainly in so far as we are interested in the perceived advantages of the sovereign State as a model of governance. These are crucial aspects of the subject, but beyond the frame of the present discussion.

usual model for critical and textual study of major paragraph stints in the political and legal realms.

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